

Exhibit 64

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NIKE, INC.,

Plaintiff,

vs.

CASE NO. 1:22-CV-00983-VEC

STOCKX LLC,

Defendant.

VIDEOTAPED DEPOSITION OF SARAH BUTLER

San Francisco, California

Tuesday, August 15, 2023

Stenographically Reported by: Ashley Soevyn,

CSR No. 12019

Job No. 5968272

Pages 1 - 224

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF NEW YORK 3 ---000--- 4 5 NIKE, INC., 6 Plaintiff, 7 vs. CASE NO. 1:22-CV-00983-VEC 8 STOCKX, LLC, 9 Defendant.</p> <hr/> <p>10 11 12 13 14 15 Videotaped Deposition of 16 SARAH BUTLER, taken on behalf of the Plaintiff Nike, 17 Inc., Pursuant to Notice, at the offices of DLA 18 Piper, 555 Mission Street, San Francisco, California 19 beginning at 8:56 a.m. and ending at 4:51 p.m. on 20 Tuesday, August 15, 2023, before me, ASHLEY SOEVYN, 21 Certified Shorthand Reporter No. 12019. 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXAMINATION 2 WITNESS: SARAH BUTLER 3 4 5 EXAMINATION BY: PAGE 6 MR. MILLER 7 7 MR. FORD 220 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 FOR THE PLAINTIFF NIKE INC.: 4 DLA PIPER 5 BY: MARC E. MILLER 6 BY: GABRIELLE VELKES 7 Attorneys at Law 8 1251 Avenue of the Americas, 27th Floor 9 New York, New York 10020 10 marc.miller@dlapiper.com 11 gabrielle.velkes@dlapiper.com 12 (212) 335-4500 13 14 FOR THE DEFENDANT STOCKX LLC: 15 DEBEVOISE & PLIMPTON, LLP 16 BY: CHRISTOPHER S. FORD 17 BY: MAI-LEE PICARD 18 Attorneys at Law 19 650 California Street 20 San Francisco, California 94108 21 csford@debevoise.com 22 mpicard@debevoise.com 23 (415) 738-5705 24 Also Present: 25 Cassie Leet, the Videographer</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXHIBITS 2 SARAH BUTLER 3 NIKE V. STOCKX 4 Tuesday, August 15, 2023 5 Ashley Soevyn, CSR No. 12019 6 EXHIBIT NO. DESCRIPTION PAGES 7 Exhibit 1 Expert Rebuttal Report of Sarah 18 Butler 8 9 Exhibit 2 Expert Report of John L. Hansen 81 10 11 Exhibit 3 Plaintiff Nike Inc's 157 Supplemental Responses and Objections to Defendant StockX 12 LLC's Third Set of Interrogatories 13 14 Exhibit 4 Document titled "Buy & Sell 185 Authentic Sneakers" 15 16 17 18 19 20 21 22 23 24 25 Exhibit 5 Document Bates No. NIKE281 - 191 NIKE287</p>

2 (Pages 2 - 5)

<p style="text-align: right;">Page 6</p> <p>1 DEPOSITION PROCEEDINGS</p> <p>2 August 15, 2023</p> <p>3 -- --0o0--</p> <p>4</p> <p>5 THE VIDEOGRAPHER: Going on the record at</p> <p>6 8:56 a.m. on August 15th, 2023.</p> <p>7 Please note that the microphones are</p> <p>8 sensitive and may pick up whispering and private</p> <p>9 conversations. Audio and video recording will</p> <p>10 continue to take place unless all parties agree to</p> <p>11 go off the record.</p> <p>12 This is Media Unit 1 of the video-recorded</p> <p>13 deposition of Sarah Butler. Taken by counsel for</p> <p>14 plaintiff in matter of Nike Inc., versus StockX</p> <p>15 Inc., filed in the United States District Court for</p> <p>16 Southern District of New York, Case No.</p> <p>17 1:22-CV-00983-VEC.</p> <p>18 The location of this deposition is 555</p> <p>19 Mission Street, Suite 2400, San Francisco,</p> <p>20 California 94105.</p> <p>21 My name is Cassia Leet, representing</p> <p>22 Veritext Legal Solutions and I'm the videographer.</p> <p>23 The court reporter is Ashley Soevyn from</p> <p>24 the firm Veritext Legal Solutions.</p> <p>25 I'm not related to any party in this</p>	<p style="text-align: right;">Page 8</p> <p>1 Q How are you today?</p> <p>2 A I'm doing well. Thank you.</p> <p>3 Q Good. Ms. Butler, are you represented</p> <p>4 today?</p> <p>5 A I have counsel here, yes.</p> <p>6 Q Okay. And that's Counsel sitting next to</p> <p>7 you?</p> <p>8 A That's correct.</p> <p>9 Q Okay. Did you do anything to prepare for</p> <p>10 today's deposition?</p> <p>11 A Yes.</p> <p>12 Q What did you do to prepare for today's</p> <p>13 deposition?</p> <p>14 A I met with counsel who is here today,</p> <p>15 briefly yesterday. I reviewed my report. I</p> <p>16 reviewed the exhibits to my report. I reviewed the</p> <p>17 portion of Dr. Simonson's report that is responsive</p> <p>18 to my report. And I reviewed the portions of</p> <p>19 Mr. Hansen's report that I cite in my report.</p> <p>20 Q You said you met yesterday briefly with</p> <p>21 counsel?</p> <p>22 A Yes.</p> <p>23 Q Is that with Mr. Ford?</p> <p>24 A Yes.</p> <p>25 Q Anyone else?</p>
<p style="text-align: right;">Page 7</p> <p>1 action nor am I financially interested in the</p> <p>2 outcome. Would counsel and all present please state</p> <p>3 your appearances and affiliations for the record,</p> <p>4 beginning with the noticing attorney?</p> <p>5 MR. MILLER: Good morning. Marc Miller</p> <p>6 from DLA Piper, on behalf of Plaintiff Nike Inc.,</p> <p>7 and I'm joined by my colleague Gabrielle Velkes.</p> <p>8 MR. FORD: Good morning. Chris Ford,</p> <p>9 Debevoise & Plimpton, on behalf of StockX. I'm</p> <p>10 joined by my colleague Mai-Lee Picard.</p> <p>11 THE VIDEOGRAPHER: Thank you. Will the</p> <p>12 court reporter please swear in the witness.</p> <p>13 THE REPORTER: Ma'am, can I please have</p> <p>14 you raise your right hand? Do you solemnly state</p> <p>15 that the testimony you are about to give in this</p> <p>16 deposition will be the truth, the whole truth and</p> <p>17 nothing but the truth?</p> <p>18</p> <p>19 THE WITNESS: I do.</p> <p>20 THE STENOGRAPHIC REPORTER: Great. Thank</p> <p>21 you.</p> <p>22 EXAMINATION</p> <p>23 BY MR. MILLER:</p> <p>24 Q Good morning, Ms. Butler.</p> <p>25 A Good morning.</p>	<p style="text-align: right;">Page 9</p> <p>1 A Mai-Lee as well.</p> <p>2 Q And for how long did you meet yesterday?</p> <p>3 A Just maybe around three hours.</p> <p>4 Q Other than yesterday's three-hour</p> <p>5 meeting, did you have any other meetings with</p> <p>6 counsel to prepare for today's deposition?</p> <p>7 A No.</p> <p>8 Q Any phone calls?</p> <p>9 A No.</p> <p>10 Q You've been deposed before, correct?</p> <p>11 A Yes.</p> <p>12 Q About how many times have you been</p> <p>13 deposed?</p> <p>14 A Probably over 100.</p> <p>15 Q Okay. And you've testify at trial</p> <p>16 before, correct?</p> <p>17 A Yes.</p> <p>18 Q How many times?</p> <p>19 A At trial, probably, maybe 15 or so times.</p> <p>20 Q In the matters for which you've been</p> <p>21 designated as an expert, has a court ever found you</p> <p>22 not qualified to serve as an expert report?</p> <p>23 A No.</p> <p>24 Q For the matters in which you've been</p> <p>25 designated as an expert has the court ever found</p>

<p style="text-align: right;">Page 50</p> <p>1 A No. I mean, the survey in this matter 2 was certainly pretested, or piloted. But there 3 weren't separate surveys that I piloted. 4 Q And who did pretesting of the survey that 5 you designed? 6 A So it's described in the body of the 7 report. We fielded the initial set of data, 8 examined the results, and then continued to rollout 9 the survey. 10 Q And the pretesting was then rolled into 11 the complete survey? 12 A That's right. There were no changes 13 made. So the data are all included. 14 Q And other than the survey that you 15 designed and implemented in this case, did you 16 conduct any other consumer research as part of your 17 engagement here? 18 A I mean, other than the kind of background 19 research that's articulated as part of the report, 20 no. 21 Q Did you conduct any consumer interviews? 22 A Aside from the survey of over 400 people, 23 no. I did not conduct any consumer interviews. 24 Q How would you describe your assignment in 25 this engagement?</p>	<p style="text-align: right;">Page 52</p> <p>1 response to Mr. Hansen's report. 2 Q So are you offering an opinion that 3 responds to Mr. Hansen's opinion? 4 A I am offering an opinion that is 5 responsive to Mr. Hansen's report in which he makes 6 an assessment that the false and misleading claims 7 had a particular impact on consumer behavior or 8 purchasing intentions. 9 Q And where in Mr. Hansen's opinion does he 10 opine on consumer behavior and purchasing 11 intentions? 12 A Well, I think he is suggesting or 13 indicating that the sales of the particular goods 14 are due to the claims -- here he cites a specific 15 claim, 100 percent authentic. 16 Q I'm not sure that I'm following your 17 answer. Where in Mr. Hansen's opinion is he opining 18 on consumer behavior and purchasing intention? 19 MR. FORD: I will just object to this to 20 the extent you have not provided Ms. Butler with the 21 entirety of Mr. Hansen's opinion. 22 THE WITNESS: Yeah, so I was going to 23 say, I certainly cite the paragraphs in his report 24 that are cited in paragraph 8, but if you would like 25 to provide me with his report, I can take a look at</p>
<p style="text-align: right;">Page 51</p> <p>1 A Well, I think as I articulate in 2 paragraphs eight and nine, I was asked to respond to 3 a portion of Mr. Hansen's report where I believe 4 he -- I quoted in paragraph 8, he asserts, quote, 5 assuming that StockX advertising claims about it's 6 authentication were false and StockX authenticated 7 and facilitated the sale of counterfeit Nike 8 Jordan-branded sneakers, my analysis indicates that 9 StockX has benefited by earning ill-gotten profits 10 derived from falsely and/or misleadingly claiming 11 that every Nike and Jordan-brand good sold on its 12 platform was 100 percent authentic. 13 Q So you were asked to respond to that 14 portion of Mr. Hansen's opinion? 15 A That's correct. 16 Q And are you offering an expert opinion 17 that responds to that portion of Mr. Hansen's 18 report? 19 A Well, I think as I articulate in 20 paragraph 9, I was asked by counsel to determine 21 whether these allegedly false statements would 22 influence or have an impact on consumers' decisions 23 to purchase sneakers -- or use the StockX platform 24 to purchase sneakers. And I understand that that 25 analysis or the analysis I conducted is in part a</p>	<p style="text-align: right;">Page 53</p> <p>1 it. 2 MR. MILLER: Chris, just for the record. 3 Limit your objections to the form. No speaking 4 objections that coach your witness. She's a pretty 5 experienced deposition and testifier and doesn't 6 need your coaching. Okay? 7 MR. FORD: I certainly don't believe that 8 Ms. Butler requires coaching. 9 MR. MILLER: I agree, so limit your 10 objections to form. 11 BY MR. MILLER: 12 Q So going back to my question, without 13 seeing Mr. Hansen's full report you would not be 14 able to point me to what you believe Mr. Hansen was 15 opining on consumer behavior and purchasing 16 intentions? 17 MR. FORD: Object to the form of the 18 question. 19 THE WITNESS: Well, I think -- again, 20 without seeing the full report -- 21 Q Uh-huh. 22 A I think that Mr. Hansen's -- as I've 23 articulated in paragraph 8, is asserting that sales 24 are due to or derived from a false or misleading 25 allegation. So...</p>


<p style="text-align: right;">Page 126</p> <p>1 even at sample sizes of 50. So certainly 409, two 2 hundred in each group, is a sufficient amount of 3 data to evaluate whether there is a statistically 4 significant difference between the distribution of 5 responses between the two populations. 6 Q Did you consider any factors about the 7 population to which you are trying to extrapolate 8 when deciding that 409 respondents were a sufficient 9 population for this study? 10 A So if I'm understanding your question, I 11 have not extrapolated with a confidence interval 12 around the results here to some other population. 13 The study is designed to evaluate whether there is a 14 statistically significant difference between the two 15 groups that are being measured. And we have 16 sufficient amounts of data to allow us to evaluate 17 whether the variation between the purchase intention 18 between these two groups is statistically 19 significantly different. 20 Q Okay. When you say you "have not 21 extrapolated with a confidence interval around 22 results here to some other population," what do you 23 mean? 24 A Well, you're using the word extrapolation 25 which to me means I have a point estimate here</p>	<p style="text-align: right;">Page 128</p> <p>1 A So the survey was designed -- or the 2 sample was selected using what we call click 3 balancing. 4 Q Okay. What is click balancing? 5 A So click balancing means that the 6 invitations to the survey are sent to a random 7 sample of U.S. adults, 18 years and older, whose 8 demographic characteristics broadly reflect the 9 demographic characteristic of the U.S. population. 10 Q Okay. Anything else besides the click 11 balancing? 12 A Well, then certainly we ask a series of 13 screening questions to ensure that respondents are 14 qualified. 15 Q Okay. And, so, I believe you said this 16 earlier, the relevant population that you intended 17 to sample from was U.S. consumers that were 18 years 18 of age or older, who have purchased a pair of 19 sneakers from StockX since 2020, or who are likely 20 do so in the next year; is that right? 21 A Not quite. No. So respondents needed to 22 indicate -- if you look at again, Exhibit D. 23 Q So before you move onto Exhibit D? 24 A Sure. 25 Q I was reading from paragraph 18 of your</p>
<p style="text-align: right;">Page 127</p> <p>1 around which I've created some confidence interval 2 because I'm extrapolating it to some broader 3 population. That's not a calculation I have as part 4 of this report. 5 Q Okay. So the results of your study, you 6 are not extrapolating them to apply to some broader 7 population; is that right? 8 A I have not performed a statistical 9 extrapolation with a confidence interval. Again, 10 the word extrapolation to me means a very particular 11 thing. 12 Q Okay. 13 A So that's not an estimate. That's part 14 of my report. 15 Q Uh-huh. 16 A Do I think these results are applicable 17 to a consumer population? Of course, I mean, that's 18 purpose of having a sufficient sample size, random 19 assignment across a broad array of demographic 20 characteristics that allow you to test whether or 21 not these authentication statements would have 22 impact on consumer behavior or not. 23 Q Okay. What did you do in this case to 24 identify the sample of the relevant population that 25 you wanted to test?</p>	<p style="text-align: right;">Page 129</p> <p>1 report. So is there something that I misstated 2 there? 3 A Oh. So, no. But I think the population 4 includes individuals who have also purchased from 5 other online -- third-party online websites. 6 Q That's not what it says here in paragraph 7 18; does it? 8 A No, it doesn't include that it's possible 9 that respondents also purchased from other 10 third-party online websites, but that's certainly 11 clear from the screening questions that are 12 described -- if you go to paragraph 22 to qualify -- 13 sorry. Third sentence, starting: 14 (As read): 15 "To qualify for the survey, respondents 16 needed to currently reside in the 17 United States and be 18 years or older. 18 Respondents also had to indicate they 19 have purchased a pair of sneakers from 20 a third-party online marketplace, e.g., 21 Ebay or GOAT since 2020, or are likely 22 to do so within the next year. 23 Respondents also had to specifically 24 indicate that they had or would 25 consider purchasing a pair of sneakers</p>

<p style="text-align: right;">Page 182</p> <p>1 indicates "Every item. Every time." Certainly on 2 page 8 we have, "we authenticate, we authenticate, 3 and you get paid." I think that's correct. 4 Q Okay. So is it fair to say that you 5 didn't test this verbatim advertising claim in this 6 survey? 7 A That is fair to say that we did not test 8 the exact statement, "We authenticate. Every item. 9 Every time." There is certainly a number of 10 iterations of we authenticate that I tested. 11 Q Okay. How about the following bullet: 12 (As read): 13 "Shop on StockX with complete 14 confidence knowing that every purchase 15 is verified authentic, period." 16 Where does that appear on Exhibit F? 17 A I don't believe that exact statement is 18 included in the test. Again, certainly there is a 19 number of references to verified authentic, but the 20 portion of this statement, "Shop on StockX with 21 complete confidence," I don't believe that was part 22 of the -- that verbatim statement was part of the 23 test. 24 Q Okay. How about the next one, 25 "100 percent authentic"?</p>	<p style="text-align: right;">Page 184</p> <p>1 I think, a more recent version of products that are 2 for sale. 3 Q So if I'm understanding you correctly, 4 you took a Wayback Machine capture and then spliced 5 it together with more a recent capture of the StockX 6 homepage? 7 A That's correct. In terms of the Wayback 8 image that was available associated with this 9 particular banner, the image was really poor. It 10 wasn't constructed. So we couldn't see the graphics 11 associated with it. So here we used a kind of more 12 recent image. 13 Q So you created a stimulus that wasn't 14 actually used in the real world; is that correct? 15 A So it's a stimulus, I think, that 16 certainly depicts how the -- this particular banner 17 appeared in the context of the StockX homepage. But 18 the products that are included as part of the 19 homepage, I think, are more recent products for 20 sale. 21 Q Okay. And, so no consumer in the real 22 world saw this stimulus, correct? 23 A That particular banner with these 24 particular products for sale? Not that I'm aware 25 of, but again, my understanding is that this banner</p>
<p style="text-align: right;">Page 183</p> <p>1 A Sure. That's on page 23. Page 12. Page 2 7. I think that's correct. 3 Q And the next one, "Buy and sell authentic 4 sneakers"? 5 A That's on page three, at the very top. 6 Q Okay. Anywhere else? 7 A No, I believe that's -- that's where it 8 appears at the top banner on the homepage. 9 Q Again, I'm going to skip the following 10 one, "Buy authentic, be authentic" which you said 11 you didn't test that verbatim claim. 12 A That's correct. 13 Q Last one, "On StockX, comma, every 14 sneaker you want is always available and authentic"? 15 A Yes. That's on page 20. 16 Q Anywhere else? 17 A I don't believe so. 18 Q So turning to page 3 of Exhibit F. 19 A Okay. 20 Q You titled this one on page 2 as "The 21 Homepage," right? 22 A Yes. 23 Q Where did you get this stimulus from? 24 A So the banner, I believe, is from the 25 Wayback Machine, and then the pages themselves are,</p>	<p style="text-align: right;">Page 185</p> <p>1 appeared in this particular way on the homepage. 2 MR. MILLER: Can we mark that Exhibit 4. 3 THE STENOGRAPHIC REPORTER: Exhibit 4. 4 (Exhibit 4 marked for identification.) 5 BY MR. MILLER: 6 Q Okay. So for this particular stimulus at 7 page 16, footnote 39 of your report. 8 A Yes. 9 Q You provided a URL for the Wayback 10 Machine, correct? 11 A I believe so, yes. 12 Sorry. It's okay to look at the record 13 now. 14 Q Yes. 15 A Which page. 16 Q Page 16, footnote 39. 17 A Okay. 18 Q Okay. The Exhibit 4 you've been handed 19 by the court reporter is a printout of that URL 20 that's referenced in your report, at exhibit -- I'm 21 sorry. At page 16, footnote 39. 22 Does that look accurate to you? 23 A It may. I would have to go back and look 24 at it. I mean, certainly there is at least one of 25 the images that looks like it's unavailable.</p>

<p style="text-align: right;">Page 186</p> <p>1 Q Okay.</p> <p>2 A I believe when we looked at it maybe</p> <p>3 there were more unavailable images.</p> <p>4 Q Okay. Does this -- so this printout is,</p> <p>5 at Exhibit 4, doesn't look like what you're</p> <p>6 recalling seeing when you went to that same URL?</p> <p>7 A I don't want to represent that I recall</p> <p>8 exactly what it looked like. I certainly see here</p> <p>9 there is an image that's missing. I believe my</p> <p>10 recollection was that there were more images that</p> <p>11 were missing.</p> <p>12 Q And, so, the fact that there were images</p> <p>13 missing from Wayback Machine capture at this URL was</p> <p>14 reason why you spliced in a lower portion of the</p> <p>15 StockX homepage from a more recent time; is that</p> <p>16 fair?</p> <p>17 A Rather than guess or kind of create</p> <p>18 images that we weren't able to identify? Yes, we</p> <p>19 added the homepage, or the banner that's at issue</p> <p>20 here, in the exact same way it appeared to a more</p> <p>21 recent version of the StockX page.</p> <p>22 Q Okay. And why did you want to test this</p> <p>23 particular banner?</p> <p>24 A So my understanding was it was a banner</p> <p>25 that -- or a header that appeared on the homepage</p>	<p style="text-align: right;">Page 188</p> <p>1 A Correct. The --</p> <p>2 Q -- so that would be --</p> <p>3 A -- five pages.</p> <p>4 Q So with respect to homepage, that would</p> <p>5 be contents that appears on page three, of Exhibit</p> <p>6 5, four, and five, correct?</p> <p>7 A It is the content that appears across</p> <p>8 those PDF pages, yes. But it's not shown as</p> <p>9 separate pages. It's shown as a website would, so</p> <p>10 you scroll up and down.</p> <p>11 Q Okay. What was the -- what was the</p> <p>12 reason for you selecting ten seconds as the minimum</p> <p>13 of time that a respondent had to spend reviewing</p> <p>14 each of the web pages in the stimuli?</p> <p>15 A So we certainly want a minimum delay.</p> <p>16 Respondents could look at a page as long as they</p> <p>17 wanted, and of course, when they are asked the</p> <p>18 questions -- or the question as to their purchasing</p> <p>19 intention, they are provided with all of the pages.</p> <p>20 So ten seconds seemed like an appropriate minimum.</p> <p>21 But respondents could certainly look at the pages</p> <p>22 for longer than that. And, of course, when they're</p> <p>23 answering the question as to their likelihood of</p> <p>24 purchasing, they are shown the thumbnails of each of</p> <p>25 the pages and as well, they can click and open any</p>
<p style="text-align: right;">Page 187</p> <p>1 and it includes the buy and sell authentic sneakers</p> <p>2 at the top of the page. And that was one of the</p> <p>3 statements Nike has claimed to be at issue in</p> <p>4 interrogatory 22.</p> <p>5 Q Okay. The stimulus that the respondents</p> <p>6 saw for the StockX homepage that we see here in</p> <p>7 Exhibit F, this is not -- the StockX homepage as it</p> <p>8 exists today does not look like this, right?</p> <p>9 A My understanding is it does not, that it</p> <p>10 includes buy and sell authentic sneakers at the top</p> <p>11 of it. That's correct.</p> <p>12 Q Do you know when that header was removed</p> <p>13 by StockX?</p> <p>14 A I don't, no.</p> <p>15 Q Okay. Do you know whether -- do you know</p> <p>16 whether consumers -- actually, strike that.</p> <p>17 As part of the design of your survey, you</p> <p>18 required each respondent to spend a minimum of ten</p> <p>19 seconds looking at this stimulus, correct?</p> <p>20 A Looking at each of the pages. That's</p> <p>21 correct, yes.</p> <p>22 Q And when you say "each of the pages,"</p> <p>23 you're referring to the web pages --</p> <p>24 A That's --</p> <p>25 Q -- correct --</p>	<p style="text-align: right;">Page 189</p> <p>1 of those pages to review them again.</p> <p>2 Q Did you track in your data whether any of</p> <p>3 the respondents clicked on those thumbnails when</p> <p>4 they were answering a question about purchase</p> <p>5 interest?</p> <p>6 A So I believe we printed out the data.</p> <p>7 I'm not sure if the data map is here. But I believe</p> <p>8 those data are recorded.</p> <p>9 Q Okay.</p> <p>10 A Sorry. It looks like these are data but</p> <p>11 maybe not the data map. So I can't quite tell from</p> <p>12 what you've printed out, but it should be in the</p> <p>13 data.</p> <p>14 Q Okay. Is a minimum of ten seconds delay</p> <p>15 on each page of the stimuli a standard number that</p> <p>16 you use in most surveys that you design?</p> <p>17 A No. I mean, in some surveys I don't</p> <p>18 require a minimum at all. In this circumstance, I</p> <p>19 wanted to be sure that at a minimum respondents were</p> <p>20 examining each of the pages for at least ten</p> <p>21 seconds. Again, they certainly could take as much</p> <p>22 time as they wanted and they had the ability to</p> <p>23 review the pages when answering the question.</p> <p>24 MR. MILLER: We've been going about an</p> <p>25 hour. Let's just take a quick five-minute break off</p>

<p style="text-align: right;">Page 198</p> <p>1 issue.</p> <p>2 Q What do you understand the word "inspect"</p> <p>3 to mean as you used it in your survey?</p> <p>4 A So it is a word that is a substitute for</p> <p>5 the words that Nike has alleged to be at issue, that</p> <p>6 have a relate -- that have some relationship to</p> <p>7 evaluating the products. But of course, if you're</p> <p>8 asking what the word, say, "authentic" means, the</p> <p>9 way to go about evaluating that is to ask consumers</p> <p>10 who purchase these kinds of products what that word</p> <p>11 or that term means.</p> <p>12 Q What is basis for your opinion that the</p> <p>13 word "inspect" is a substitute for the word</p> <p>14 "authentic"?</p> <p>15 A I'm not saying it's a substitute for the</p> <p>16 word authentic in consumers' minds. What I'm saying</p> <p>17 is it's an appropriate control here, so we can use</p> <p>18 it as a substitute. We're swapping out, obviously,</p> <p>19 the language that Nike has alleged to be at issue</p> <p>20 for a control. Which is a word that makes sense</p> <p>21 within the context of the stimuli we're testing, but</p> <p>22 is not a word that I understand Nike has nor does it</p> <p>23 appear anywhere in interrogatory 22, is a word that</p> <p>24 Nike has accused as being false or misleading.</p> <p>25 Q What is the basis for your opinion that</p>	<p style="text-align: right;">Page 200</p> <p>1 control.</p> <p>2 BY MR. MILLER:</p> <p>3 Q Does your survey provide any information</p> <p>4 about how the respondents understood or interpreted</p> <p>5 the term "inspect"?</p> <p>6 A Again, the survey is not designed to</p> <p>7 evaluate consumers' understandings of authentic, nor</p> <p>8 is it designed to evaluate their perceptions or</p> <p>9 understandings of the word "inspect."</p> <p>10 Q So you're not offering an opinion on how</p> <p>11 respondents interpreted the word "inspect," correct?</p> <p>12 A I am not offering a specific opinion as</p> <p>13 to how consumers interpret the word "authentic." I</p> <p>14 have not seen any data to demonstrate that, nor am I</p> <p>15 offering an opinion as to how consumers understand</p> <p>16 the word "inspect."</p> <p>17 Q Looking back at figure 11 in your report,</p> <p>18 there were certain statements or advertising claims</p> <p>19 that you removed entirely, correct?</p> <p>20 A I believe there is only one, yes. That's</p> <p>21 correct.</p> <p>22 Q Why did you decide to remove that entire</p> <p>23 statement as opposed to replacing some of the words</p> <p>24 or altering the statement in some way?</p> <p>25 A I think the one that is removed contained</p>
<p style="text-align: right;">Page 199</p> <p>1 word "inspect" is an appropriate control to use in</p> <p>2 the survey that you designed and implemented?</p> <p>3 A Because it is a word that makes sense</p> <p>4 within the context of the stimuli I am testing, and</p> <p>5 it is not a word that is part of the statements that</p> <p>6 Nike has alleged to be infringing -- not infringing,</p> <p>7 sorry. It's not a word in and of itself that Nike</p> <p>8 has alleged to be false or misleading.</p> <p>9 Q Did you consider using any other words</p> <p>10 beyond inspect for your control?</p> <p>11 A I may have, but I don't recall any other</p> <p>12 specific words. No.</p> <p>13 Q Did you -- did you test any other words</p> <p>14 other than implement as a control?</p> <p>15 MR. FORD: I think you misspoke there.</p> <p>16 Object to form.</p> <p>17 THE WITNESS: I didn't use word</p> <p>18 "implement," I used inspect. I think you said</p> <p>19 implement.</p> <p>20 But no, I didn't pretest or evaluate a</p> <p>21 whole set of other words. Again, inspect or</p> <p>22 inspected or inspectors, again, is not a word in and</p> <p>23 of itself I understand Nike to be claiming as false</p> <p>24 or misleading. And it makes sense within context of</p> <p>25 the pages being tested. So it's an appropriate</p>	<p style="text-align: right;">Page 201</p> <p>1 a number of the statements -- or the number of</p> <p>2 pieces that Nike had claimed to be at issue. So</p> <p>3 that particular statement, which is, quote,</p> <p>4 construction with checklist of 100-plus data points</p> <p>5 are authenticators are better equipped than anyone</p> <p>6 to ensure a products' authenticity.</p> <p>7 So I understand the 100-plus data points</p> <p>8 is at issue. So I think removing that and then, to</p> <p>9 ensure a products' inspection. It didn't seem to</p> <p>10 make a lot of sense. So we just decided to</p> <p>11 conservatively remove the whole statement.</p> <p>12 Q Going back to Exhibit F, the stimuli that</p> <p>13 you used in the test and the control groups?</p> <p>14 A Yes.</p> <p>15 Q Why did you select these five web pages</p> <p>16 from the StockX website?</p> <p>17 A Sure. So if you look in my report, but I</p> <p>18 think as I -- if I can find the paragraph. But as I</p> <p>19 articulate, these are pages that a consumer can</p> <p>20 reasonably interact with when looking to purchase a</p> <p>21 particular pair of sneakers. So they see the</p> <p>22 homepage, they see project array page, as well as a</p> <p>23 specific products page. They also see two pages</p> <p>24 which include kind of detail about StockX's process.</p> <p>25 And, so the combination of the five pages</p>

<p style="text-align: right;">Page 202</p> <p>1 represent pages consumers might see. There are also 2 pages about the process and they include a whole 3 range of the different statements or variations of 4 statements that Nike has claimed to be false or 5 misleading.</p> <p>6 Q And why did you put these five web pages 7 in the particular order that you did in the survey?</p> <p>8 A So the homepage comes first, because 9 that's generally a kind of reasonable way that 10 consumers start looking at the site. And the pages 11 then are the next -- sorry. The next two pages are 12 obviously the pages about how the process works, as 13 if somebody were learning about how to purchase or 14 how the process works on the page.</p> <p>15 And then they are shown an array of 16 products and then a specific product. Again, of 17 course, all of these pages are available when the 18 respondent is answering the question in whatever 19 form they want to look at them.</p> <p>20 Q What is the basis for the testimony you 21 just gave that a user visiting the homepage first is 22 generally a kind of reasonable way that they start 23 looking at the website?</p> <p>24 A So, over 20 years of doing consumer 25 research, many consumers start by looking at a</p>	<p style="text-align: right;">Page 204</p> <p>1 driven, or have caused all consumers to purchase 2 products. So I'm evaluating whether or not these 3 statements within the context which they occur on 4 the website would have an effect on consumers' 5 purchasing behavior.</p> <p>6 Q If you could turn to Exhibit D to your 7 report please.</p> <p>8 A Okay.</p> <p>9 Q And, so, question two in your survey, 10 this asks respondents to rank how likely they 11 would -- how likely they would be to use the StockX 12 website to purchase a pair of sneakers, correct?</p> <p>13 A That's correct.</p> <p>14 Q And for that you use the seven-point 15 scale --</p> <p>16 A That's correct.</p> <p>17 Q -- that's shown at the top of page 13, 18 right?</p> <p>19 A Sorry. Yes, that's correct.</p> <p>20 Q Why did you decide to use a question like 21 question two for this survey?</p> <p>22 A So Likert scales, of which this is, are 23 well-researched, well-used in survey research and 24 psychological research as a means by which to 25 evaluate a whole series of behaviors or questions.</p>
<p style="text-align: right;">Page 203</p> <p>1 homepage of a site that they might use to purchase a 2 product.</p> <p>3 Q Did you review any documents or data from 4 StockX that would support your belief that most 5 consumers start by visiting the StockX.com homepage?</p> <p>6 A I don't think I offered an opinion that 7 StockX's consumers necessarily start at StockX's 8 homepage. Certainly the order in which these pages 9 are shown to respondents is held constant between 10 the test and the control. And the pages display a 11 range of the statements Nike has alleged to be at 12 issue, held constant between the test and the 13 control and respondents can look at any of the pages 14 when answering the question that they are 15 particularly interested in.</p> <p>16 Q Did you look at any StockX documents that 17 would provide any information about how consumers 18 view these pages, if they view them at all?</p> <p>19 A So if your question is simply do I have 20 some data as to the rate at which people view 21 particular pages within StockX? No. Again, for the 22 purpose of my survey, I'm using these different 23 pages to evaluate Nike's claim, or perhaps more 24 specifically, Mr. Hansen's claim, that the types of 25 allegedly false or misleading statements have</p>	<p style="text-align: right;">Page 205</p> <p>1 So they are well-founded. It allows me to look at a 2 distribution across a range of data as opposed to 3 asking a question of -- as opposed to let's say, 4 asking a binary question. So those are probably the 5 primary reasons.</p> <p>6 Q And question three, the respondents were 7 asked after question two, and this is an open-ended 8 question, right?</p> <p>9 A That's correct.</p> <p>10 Q And they were asked to explain what makes 11 you say that your likelihood of using this website 12 to purchase a pair of sneakers would be, and then it 13 fills in the ranking that they applied, correct.</p> <p>14 A That's correct.</p> <p>15 Q What is an open-ended question?</p> <p>16 A An open-ended question is a question that 17 does not provide respondents with a set of response 18 options. It requires them to provide some kind of 19 narrative or verbatim response.</p> <p>20 Q And why did you decide to include an 21 open-ended question in your survey?</p> <p>22 A So open-ended questions provide a set of 23 data that can be used to evaluate respondents' 24 thinking or reasoning behind a prior answer. I 25 mean, depending on the context, open-ended questions</p>

<p style="text-align: right;">Page 222</p> <p>1 I, SARAH BUTLER, do hereby declare under 2 penalty of perjury that I have read the foregoing 3 transcript; that I have made any corrections as 4 appear noted, in ink, initialed by me, or attached 5 hereto; that my testimony as contained herein, as 6 corrected, is true and correct. 7 EXECUTED this _____ day 8 of _____, 9 20____, at _____, _____. 10 (City) (State) 11 12 13 SARAH BUTLER 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 224</p> <p>1 ***ERRATA SHEET*** 2 NAME OF CASE: NIKE V. STOCKX 3 DATE OF DEPOSITION: 8-15-23 4 NAME OF WITNESS: SARAH BUTLER 5 Reason codes: 6 1. To clarify the record. 7 2. To conform to the facts. 8 3. To correct transcription errors. 9 Page ____ Line ____ Reason ____ 10 From ____ to ____ 11 12 Page ____ Line ____ Reason ____ 13 From ____ to ____ 14 15 Page ____ Line ____ Reason ____ 16 From ____ to ____ 17 18 Page ____ Line ____ Reason ____ 19 From ____ to ____ 20 21 Page ____ Line ____ Reason ____ 22 From ____ to ____ 23 24 SARAH BUTLER 25</p>
<p style="text-align: right;">Page 223</p> <p>1 I, the undersigned, a Certified Shorthand 2 Reporter of the State of California, do hereby 3 certify: 4 That the foregoing proceedings were taken 5 before me at the time and place herein set forth; 6 that any witnesses in the foregoing proceedings, 7 prior to testifying, were duly sworn; that a record 8 of the proceedings was made by me using machine 9 shorthand, which was thereafter transcribed under my 10 direction; further, that the foregoing is a true 11 record of the testimony given. 12 I further certify I am neither financially 13 interested in the action nor a relative or employee 14 of any attorney or party to this action. 15 IN WITNESS WHEREOF, I have this August 18, 16 2023 subscribed my name. 17 18 19  20 21 ASHLEY SOEVYN 22 CSR No. 12019 23 24 25</p>	